ORIGINAL

HORIZON
Personal Communications

June 20, 1997

Via Hand Delivery

Mr. William F. Caton
Secretary
Federal Communications Commission
1919 M Street, NW, Room 222
Washington, DC 20554

Re: Comments of Horizon Personal Communications, Inc.
WT Docket 97-82, DA 97-679

Dear Mr. Caton:

Horizon Personal Communications, Inc. ("Horizon") is submitting its comments in response to the June 2, 1997 *Public Notice* in which the Wireless Telecommunications Bureau seeks comment on various broadband PCS C- and F-Block installment financing questions. Horizon is the C-Block broadband PCS licensee in the Basic Trading Area ("BTA") markets of Athens, Chillicothe and Zanesville-Cambridge, Ohio (Markets B023, B080 and B342) and Huntington and Parkersburg, West Virginia (Markets B197 and B342) and an affiliate of The Chillicothe Telephone Company ("Chillicothe Telephone"), a local exchange telephone and exchange access provider in the state of Ohio. Since Horizon has no F-Block licenses, its comments relate exclusively to the C-Block. Horizon encourages the Wireless Bureau to apply these comments to F-Block issues as appropriate.

Although Horizon is well along in the design and construction of its broadband PCS network, and is prepared to pay for its licenses in accordance with the terms of its current notes and security agreements, Horizon applauds the Wireless Bureau's recognition of the financial crisis facing many of the C-Block licensees (and which has had a significant impact on Horizon as well) and the Bureau's apparent willingness to remedy this situation. No one could have predicted what the one year delay between the A- and B-Block auction and the C-Block auction has done to the cost of obtaining capital. Unlike a handful of other C-Block carriers, Horizon does not believe the current financial crisis facing many licensees is a result of poor business planning, but rather is the result of delays and other circumstances well beyond their control.

Regardless, Congress has charged the Commission with the duty to ensure that small businesses, among others, have a realistic opportunity to compete in the provision of spectrum based services. The current financial distress of some bidders, combined with the sharp devaluation of PCS spectrum following the D-, E- and F-Block auction and the Wireless Communications Service ("WCS") auction, has created a wholly new competitive environment for *all* C-Block entrepreneurs, who must work together to negotiate intercarrier agreements and build networks that can compete with entrenched cellular providers, PCS incumbents and well-branded non-entrepreneurs. Without decisive and meaningful action by the Wireless Bureau that is designed to promote the interests of all C-Block licensees, small businesses and other entrepreneurs will be deprived of any meaningful opportunity to compete in the provision of broadband PCS. Retaining the *status quo* will inevitably lead to bankruptcies, license defaults, and further delay in the provision of service to the public.

With these points in mind, Horizon provides the following suggestions and comments:

1. Correct the Interest Rate on C-Block Installment Payment Plans

Horizon believes that the Wireless Bureau must apply an interest rate which has been calculated in accordance with the Commission's rules in a consistent fashion to all C-Block licensees. The correct rate is one that is tied to the government's cost of money, and calculated according to the rate for ten-year U.S. Treasury obligations applicable on the date the license is granted. For C-Block licenses granted on September 17, 1997, this rate is 6.535 percent.

Under Section 24.722(b)(3) of the Commission's Rules, the Bureau has authority to impose interest on installment payments by eligible C-Block licensees based on the rate for ten-year U.S. Treasury obligations applicable on the date the license is granted. At Paragraph 239 of the Competitive Bidding Second Report and Order, the Commission stated that "interest on installments should be charged *at a rate no higher than the government's cost of money* [emphasis added]."

The government's "cost of money" with respect to the C-Block licenses granted on September 17, 1997, was 6.535 percent. Therefore, the interest rate imposed should be no greater than 6.535 percent. The rate imposed by the C-Block Notes and Security Agreements for these licenses is 7.00 percent, which was the *coupon rate* for the Treasury obligations. The coupon rate is not an actual interest rate resulting from market forces and does not reflect the government's "cost of money." Rather the coupon rate is merely the desired target interest rate printed on the notes prior to a Treasury auction. C-Block licensees learned that the Bureau intended to impose a greater 7.00 percent rate only *after* they received their Notes and Security Agreements from the FCC. For Horizon, this was on October 22, 1996.

Horizon advised the Commission of this fact when Horizon filed its request for correction of the interest rate on C-Block installment notes on November 7, 1996. Therefore, Horizon requests that the Wireless Bureau impose an interest rate on all C-Block licensees, less than or equal to a rate calculated based on the date on which the licenses were granted.

2. Refund all March 31, 1997 Installment Payments

As a result of a request filed on behalf of a group of C-Block licensees and at the close of business on the very day that C-Block installment payments were due, the Wireless Bureau issued an order suspending the deadline for C-Block installment payments. Consequently, licensees making payments safely in advance were not able to take advantage of the suspension. Licensees that were diligent and that made timely payments, such as Horizon, are now being deprived of funds that could be put to use for construction and operation of their PCS systems, as well as interest income.

As a matter of fairness, Horizon believes that it is entitled to a full refund of its March 31 installment payment, plus interest. Ideally, interest should be calculated at each company's cost of money. However, in the interest of practicality, Horizon would support an interest rate calculated at the government's cost of money. All C-Block licensees that made timely installment payments in accordance with the terms of their C-Block notes and security agreements should have the option of receiving a prompt refund of these monies.

3. Allow Parties that are Partitioning and/or Disaggregating One-Third or Less of the MHz-Pops in a BTA to Participate in the Installment Plan Based on a Negotiated Price, Not a *Pro-Rata* Share of the Existing Debt

In conjunction with the reasonable modifications to the C-Block installment payment plan discussed above, the Bureau should take this opportunity to modify its rules regarding installment financing for broadband PCS partitionees and disaggragatees. The current rules require that these parties execute financing documents agreeing to pay the U.S. Treasury their *pro-rata* portion of the balance due. Thus, small businesses and entrepreneurs that seek to obtain spectrum rights through partitioning and/or disaggregation are forced by the Commission's Rules to pay a premium for spectrum in rural areas rather than a price set by arms-length negotiation between the parties. The result is a significant disincentive for small businesses and rural telephone companies to enter into such agreements with C-Block licensees.

Geographic partitioning and spectrum disaggregation arrangements benefit C-Block licensees by providing them with a potential source of capital that can be used for license payments and/or financing the buildout and operation of their broadband PCS system. Moreover, partitioning often makes economic sense for C-Block licensees because it allows them to meet their construction requirements by focusing on urban and suburban areas, where buildout costs are lower and traffic is greatest. Requiring rural partitionees and disaggregatees to assume a *pro-rata* share of the remaining debt precludes the parties from negotiating a price based on the cost of serving these areas.

Horizon believes the Wireless Bureau should promptly remove this barrier to partitioning and disaggregation of spectrum in non-metropolitan areas by C-Block licensees and exempt all such arrangements which involve one-third or less of the Mhz-pops in a BTA from the obligation to share in a *pro-rata* portion of the original licensee's debt. Allowing the parties involved to value the spectrum as they see fit is in keeping with the objectives of competitive bidding, will provide C-Block licensees with another source of capital, and will promote rural PCS service from businesses utilizing C-Block frequencies. Moreover, such arrangements are in the public interest because they help to bring advanced wireless services to rural and underserved areas. It also allows carriers some leeway in expanding or modifying their service areas to fit customer demands.

4. Provide PCS Entrepreneurs Multiple Options to Resolve Current Financial Difficulties

Obviously, the most important issue the Wireless Bureau must consider in this proceeding relates to helping the C-Block carriers overcome their financing difficulties.

Based on Horizon's interactions and conversations with other C-Block players, Horizon believes that without significant assistance from the Wireless Bureau the majority of C-Block licensees with licenses to provide service to the majority of the population and geographic area of the United States will be unable to provide service within the established time constraints, if at all. Consequently, a number of significant harms will occur. First, continued financial difficulties will result in many license defaults leaving many PCS companies and their investors in ruin--destroying the very companies Congress intended to help the most. Secondly, the government will be forced to reauction these licenses years after the first licenses were auctioned. Based on the results of the D-, E-, and F-Block auctions and the WCS auction, these reauctions are likely to yield prices less than ten percent of the prices established in the C-Block auction. The government will receive a small fraction of the revenues anticipated at the end of the C-Block auction. Thirdly, a lack of C-Block carriers is likely to harm non-metropolitan communities. The A- and B-Block carriers are focusing on the large metropolitan communities within their service areas and are likely to continue to do so for the foreseeable future. In fact, most A- and B-Block build-out requirements can be met without migrating service beyond the largest metropolitan areas in each MTA. The C-Block carriers, because of their BTA focus and build-out requirements, are in the best position to rapidly bring state-of-the-art digital services and much needed competition with cellular carriers to the smaller communities throughout the country.

However, it is not only the companies facing financial crisis and their service areas that will be harmed. Even companies, like Horizon, which are on an even financial keel, will experience great difficulties if the Wireless Bureau is unwilling or unable to assist the companies in crisis. Fellow C-Block licensees are the most likely carriers to serve as allies and partners in providing seamless coverage and regional and nationwide networks. The incumbent cellular providers and the A-, B-, D-, and E-Block licensees in adjacent markets have less incentive to cooperate with neighboring C-Block carriers. If the current financial climate destroys most of the C-Block players, only those C-Block licensees who are aligned with A-,B-,D- or E-Block carriers will be able to move forward unaffected. Stable, surviving companies which do not have such backing, like Horizon, may be forced to operate as islands, while the communities and customers they serve will be unable to experience the true benefits PCS has to provide.

Horizon has made timely payments for each of its C-Block licenses, including the March 31, 1997, installment payments and has already been able to arrange financing. Yet Horizon has still experienced significant, unexpected, and undeserved difficulties due to the current C-Block financial arrangements and climate. First, with up-front capital focused on interest payments to the government, Horizon has been unable to build-out its markets as aggressively as it would like to. The communities left unserved, obviously, are the most rural and, in a number of cases, communities that currently have poor wireless service if any at all. Secondly, negotiating financial arrangements has been much more difficult than expected. Horizon's cost of money was higher than its stability, reputation, and business plan warranted. More importantly, the conditions under which Horizon was able to receive its financing were unnecessarily cumbersome. Consequently, Horizon will be bringing its services to market more than six months later than originally expected, depriving the communities it serves of up-to-date digital services and allowing its primary competitors significant advantages. The climate also makes acquiring additional capital for network expansion virtually impossible. Finally, Horizon has hopes of partitioning other non-metropolitan areas in larger BTAs from other C-Block licensees. Horizon believes such partitioning would bring PCS service more rapidly to those communities. However, without a change in the current financial climate, Horizon will not have the capital to invest in partitioning and the companies most likely to make such arrangements may not exist.

The Wireless Bureau now has the opportunity to change the financial climate. It must do more for Entrepreneurs' Block licensees than simply moving from a quarterly to an annual payment schedule. Modifying the installment payment plan in this way will help a few C-Block licensees to temporarily overcome their cash-flow problems and may provide a few carriers (such as Horizon) with the opportunity to apply a little extra capital toward build-out. But Horizon believes this one solution will not be enough the save the C-Block and prevent the above mentioned harms. The Wireless Bureau should instead provide all licensees with a range of options designed to reduce their financial burdens and to encourage rapid build-out and entry into the wireless marketplace.

Because each licensee's circumstances are unique, Horizon believes that no single solution can meet every company's needs. Therefore, Horizon is suggesting four options to be made available to C-Block licensees to reduce their various financial difficulties. The first option is *to allow companies to prepay license fees at discounted prices*. The second option is *to allow companies to restructure their debt in a manner that provides the most reasonable Net Present Value*. The third option is *to allow companies to return selected BTAs for reauction*. And the forth option is *to allow companies to continue making license payments according to their current obligations.*

Obviously, options one, two, and three are reasonable changes from the current payment plan. Horizon believes that, in exchange for the benefits afforded by any of these options, the Wireless Bureau should expect licensees who take advantage of any or all of them to meet reasonably accelerated build-out schedules for the affected BTAs. By doing so, many advantages accrue: the licensee is able to enjoy a more beneficial financial climate with the opportunities envisioned by Congress, the government reduces the risk of default and increases its likelihood of receiving a substantial portion of the revenues expected as a result of the C-Block auction, and the public interest is served by encouraging the carriers to build-out their service areas more rapidly.

The following is a discussion as to how Horizon believes these options ought to be structured:

Option 1: Allow Companies to Pre-pay License Fees at a Price Less Than or Equal to A- & B-Block Prices

In answer to the Bureau's question in Footnote 6 in the *Public Notice*, Horizon would be able to prepay it's debt if the license prices were reduced to levels equivalent to those established in the A- and B-Block auction, provided they are calculated appropriately on a per BTA basis. Horizon believes that it would be appropriate for the Wireless Bureau to use the A- and B-Block auction as a benchmark for the C-Block, since those prices were set by market forces based on present value dollars. The Wireless Bureau has always intended the pricing of C-Block licenses to be related to pricing on the A- and B-Block. In paragraph 39 of the Fifth Report and Order contained in the C-Block bid packet, the Commission stated that the auction on blocks A and B will produce price information that would be valuable to designated entities in their business planning. The Commission has already approved of the logic in using A- and B-Block auction prices as a benchmark for setting the value of PCS licenses that were *not* included in that auction when it adopted a method for setting the price for broadband PCS pioneer's preference awards. Horizon further believes that it would not be unreasonable for the Wireless Bureau to create a prepayment rate *below* the levels established in the A- and B-Block auctions.[1]

The calculation of a prepayment price must be pro-rated on a per BTA basis to assure that less expensive BTAs are appropriately discounted. Horizon recommends that the Commission create a factor based on the difference between the nationwide per POP average of the A- and B-Block auctions and that of the C-Block auction. This factor should then be multiplied against each C-Block BTA total to form the basis of a prepayment price for that BTA. An appropriate reduction to account for the bid credit could then be applied to determine the actual prepayment price.

This option would put fiscally prudent entrepreneurs, who are in a unique position to bring the benefits of new digital services and lower prices to non-metropolitan markets, more on a par with their A- and B-Block competitors and lessen the substantial edge enjoyed by incumbent cellular licensees. This option also offers benefits to all concerned parties. The government and U.S. taxpayers would benefit by receiving the license payments sooner and by shifting the risk from the government to the licensee; the public would benefit because C-Block licensees will be able to build

[1] The Commission concluded at Paragraph 132 of the Fifth Report and Order that it was in keeping with legislative intent to provide small businesses with a bid credit in addition to creating an entrepreneurs' block set-aside. Therefore, it would be appropriate for the Wireless Bureau to consider reducing C-Block bid prices *an additional ten to twenty-five percent* from the prices set in the A- and B-Block auction.

out their coverage more quickly; C-Block licensees like Horizon will be able to receive more appropriate financing by having outright ownership of the spectrum; and competition will be enhanced. Cellular and A- and B-Block PCS licensees will still enjoy substantial advantages in the time to market, availability of capital, brand name recognition, and the economies of larger service areas.

Option 2: Allow Companies to Defer Interest Payments for Five Years and to Pay Entire Principal in Year Ten

Consistent with the proposal of MCI, the Wireless Bureau should provide C-Block licensees with the option of deferring all interest payments for five years. It should also "back load" the repayment of principal by entrepreneurs so that a majority, if not all of the principal, is payable in year 10. Such a restructuring option will allow companies to receive the maximum reduction in Net Present Value without exceeding the term of the licenses or reducing the amount of principal. While others have suggested less aggressive restructuring plans, Horizon believes that any plan less aggressive than this is unlikely to save the majority of C-Block licensees from default.

Option 3: Allow Companies to Return Selected BTAs for Reauction

Under the current rules, a licensee that is able to finance the build-out and operation of some, but not all, of its licenses has no ability to eliminate those areas which are not viable. Since market values have decreased sharply since the C-Block auction, selling the license is not an option. Given the Bureau's cross-default policy, if this licensee were to default on just one BTA, all of its licenses could be thrown into default and these licenses would then likely need to be reauctioned. If the licensee chooses simply to ignore its obligations to construct the BTA, the public interest is not served and, after five years, the license will be returned to the government for reauction anyway.

Therefore, Horizon believes it is in everybody's best interest for the Wireless Bureau to give companies the option to return selected BTAs for reauction without any threat of cross-default to their other licenses and without the obligation to pay any "difference penalty" set by the high bid price at reauction. The mechanics of any license "give-back" option would have to be designed to prevent a large-scale return of licenses, and to encourage the return of a license promptly, in advance of business failure. To this end, safeguards could be put into place that would restrict a licensee from bidding on any license it returns in a reauction. The Commission could also prohibit a licensee's participation in the reauction if it turns in more than five licenses. Any reauctions should be conducted as quickly as possible so as to best serve the public interest by getting the licenses in the hands of companies which are willing and able to build them out quickly.

While the Wireless Bureau may be reluctant to adopt this license give-back option, Horizon believes that it would be much better for the FCC to follow such a course now than to force C-Block licensees to keep all of their markets and invite large scale bankruptcies and license defaults down the road. The public interest is best served if the spectrum is reassigned promptly to an entity that is able to provide service to the public. The public interest is also served by allowing C-Block licensees to shore-up their financial condition by paring off those licenses which the changed economic circumstances now prevent them from constructing.

Option 4: Allow Companies to Continue Making License Payments According to their Current Obligations

Horizon suggests that any company taking advantage of option 1, 2, or 3 or any combination thereof, should be expected to meet reasonably accelerated build-out requirements. However, it is likely that some companies will not wish to accelerate their build-out requirements. So as to allow such companies to continue to implement their established business plans, the Wireless Bureau must provide these licensees with the option to continue making their license payments in accordance with their current obligations to do so. However, the Commission should issue these licensees new notes and security agreements which impose interest at the correct rate, calculated in accordance with the Commission's rules and previous rulemaking statements. As indicated above, this rate is to be no greater than 6.535 percent for all C-Block licensees who received grants of their licenses on September 17, 1996.

Conclusion

Obviously, the Wireless Bureau cannot, and should not, guarantee the success of all C-Block auction winners. Some businesses may fail from poor business planning, and others may fail due to increased competition in the wireless marketplace. But C-Block entrepreneurs as a whole should not be doomed to failure due to unforeseeable changes in the financial climate and sharp decreases in the perceived value of wireless spectrum *before* they even have an *opportunity* to compete. Horizon believes that the range of options it has set forth herein will provide all C-Block licensees with such an opportunity. It will also allow entrepreneurs to select the option that is right for them. Therefore, Horizon requests that the Wireless Bureau modify its rules in accordance with Horizon's comments.

Sincerely,

William A. McKell, President